IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/06/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.25055 OF 2002

V. Sundarrajan
S/o. Venu .. Petitioner

-Vs-

1. The Director,
National Institute of Technical
Teachers Training and Research,
Taramani, Chennai 113.

2. K.S. Raju,
Chairman, BOG, TTTI,
Nagarjuna Fertilizers Chemicals Ltd.,
Hyderabad 82.
Andhra Pradesh. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.R. Sankara Subbu

For Respondents : Mr. K.V. Subramanian

:J U D G M E N T

In the present writ petition, the petitioner has prayed for issuing writ of certiorarified mandamus for quashing the order dated 15.3.200 2 in No.E.II/OP/2001-02 and for directing the respondents to retain the petitioner in the first respondent Institute at Chennai.

2. The petitioner, who was initially appointed as helper under the first respondent, which is fully aided by the Union of India, Ministry of Human Resources, in course of time got himself technically qualified and was posted as a technician. He had made request to transfer him to any Engineering Department in the Unit at Chennai. Initially such request had been turned down. Subsequently to his dismay, the petitioner had been transferred to a unit at Kerala under the impugned proceedings. Such transfer order has been challenged in the writ petition mainly on the ground that

transfer has been made for a collateral purpose.

3. Whatever may be the worth of the contentions raised in the writ petition, it is obvious that in view of the subsequent events, the relief claimed by the petitioner cannot be granted to him. It is obvious that even though initially an interim order of stay was granted, subsequently it was found that before stay was granted, the petitioner had been relieved and subsequently, the stay order was vacated. Initially the transfer of the petitioner was considered to be one made on the basis of his own request disentitling him to claim transfer allowance available at the time of transfer. Subsequently, however, petitioner himself made a request to the authority to treat his transfer as if on normal and regular basis. Such request has been subsequently accepted and transfer has been treated to be one made on regular basis and not on request of the petitioner. Thereafter the petitioner joined at the new place of posting and apparently claimed transfer allowance. In the meantime, the petitioner has also given in writing that he did not want to proceed with the writ petition. Subsequently, by filing additional affidavit, the petitioner claims that such writing has been given on the basis of coercion and not given voluntarily. In a writ petition it is difficult to resolve such hotly disputed questions of fact.

4. In course of hearing, the petitioner, who was at times appearing in person, and his counsel made submission to the effect that the petitioner with his family stays at Chennai and it is very difficult to maintain himself as he had been transferred to Kerala. It has been further submitted that other persons employed under the respondents belonging to Kerala were willing to go back to Kerala and therefore the petitioner can be re-posted to Chennai.

5. In view of these subsequent events and keeping in view the submissions made, while not interfering with the original order of transfer, it is observed that it would be open to the petitioner to make a fresh representation and if such representation is made, the same should be considered sympathetically by the respondents. If a representation is made within fifteen days, the same should be considered within a period of two months from the date of receipt of the representation.
The fact that allegations and counter allegations have been made in the writ petition should not be held against the petitioner and such application for re-transfer should be considered on its own merits. It has to be remembered that even though tr er is a normal incident of service, transfer of persons, particularly persons in the lower grade of pay, to an outside State results in much inconvenience to such transferred employee and his family members, thus disrupting the mental equilibrium of an employee. As an ideal employer, it is the duty of the employer to maintain a humane facade. Every representation or even an allegation of an employee cannot be treated as affront by a person in authority. Every employer while having the right to transfer its employees as per its rules and regulations to any place, such employer is required to keep in view as far as possible the pros and cons of such transfer so far as the employee is concerned.

6. Having regard to the facts and circumstances of the case, the writ petition is disposed of with the above observation without interfering with

the order of transfer. No costs.

dpk

To

The Director,
National Institute of Technical
Teachers Training and Research,
Taramani, Chennai 113.